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8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 NORTHERN DISTRICT OF CALIFORNIA
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11 RICHARD P. WELLS, For Himself
12 And In His Representative Capacity
13 As Administrator of the Estate of
Marilyn Wells, Decedent, and As
Guardian of His Minor Children,

14 Plaintiff,

15 vs.

16 CALIFORNIA PHYSICIANS'
17 SERVICE, dba BLUE SHIELD OF
CALIFORNIA,

18 Defendants.
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Case No. C 05 1229 CRB

**STIPULATION AND ~~PROPOSED~~
ORDER CONTINUING
SETTLEMENT CONFERENCE**

Settlement Conference:

Date: February 6, 2007

Time: 9:30 a.m.

Place: Courtroom A

21 IT IS HEREBY STIPULATED by and between plaintiff Richard P. Wells, in
22 his individual capacity, as administrator of the Estate of Marilyn Wells, decedent,
23 and as guardian of his minor children ("Plaintiff") and defendant California
24 Physicians' Service, dba Blue Shield of California's ("Blue Shield"), through their
25 respective counsel of record, as follows:

26 WHEREAS, a Settlement Conference in the above-captioned matter is
27 currently scheduled for 9:30 a.m. on February 6, 2007;
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1 WHEREAS, all parties and their counsel participated in a Case Management
2 Conference in this matter before Magistrate Judge Charles R. Bryer on October 20,
3 2006;

4 WHEREAS, on October 17, 2006, the Ninth Circuit Court of Appeals issued
5 an opinion in *Glanton v. Advancepcs, Inc.*, 2006 DJDAR 13934, which addressed,
6 among other things, the question of whether an ERISA plan participant who has
7 suffered no judicially cognizable injury may maintain an action against the plan's
8 fiduciaries for injunctive relief under ERISA;

9 WHEREAS, Defendant believes the holding in *Glanton* may be dispositive
10 of Plaintiff's remaining claims in this action;

11 WHEREAS, the Court at the October 20, 2006 Case Management
12 Conference continued all pending dates to permit Blue Shield to bring a motion for
13 summary judgment under *Glanton* once that opinion becomes final;

14 WHEREAS, the appellant in the *Glanton* action filed petitions for panel
15 rehearing and for rehearing en banc on October 31, 2006;

16 WHEREAS, the Ninth Circuit denied the *Glanton* appellant's petitions for
17 panel rehearing and for rehearing en banc on January 8, 2007;

18 WHEREAS, the Ninth Circuit is expected to issue its mandate in *Glanton* on
19 or about January 22, 2007;

20 WHEREAS, Blue Shield intends to file a motion for summary judgment
21 shortly after the *Glanton* opinion is final;

22 WHEREAS, it will not be possible for Blue Shield's motion for summary
23 judgment to be heard until Mid-March 2007 at the earliest; and

24 WHEREAS, the parties will not be able to participate in a meaningful
25 continued Settlement Conference until the Court has ruled on the applicability of
26 *Glanton* to this action,

1 NOW, THEREFORE, and based upon the above recitals, it is hereby agreed
2 and stipulated by the parties hereto, through their respective attorneys of record,
3 that:

4 1. The Settlement Conference presently scheduled for 9:30 a.m. on
5 February 6, 2007 is continued to 9:30 a.m. on March 20, 2007.

6 IT IS SO STIPULATED.

7 MANATT, PHELPS & PHILLIPS, LLP
8 GREGORY N. PIMSTONE
9 ADAM PINES
10 TRAVIS A. CORDER

11 Dated: January 22, 2007

By: s/ Adam Pines
Adam Pines
Attorneys for Defendant
CALIFORNIA PHYSICIANS' SERVICE,
dba BLUE SHIELD OF CALIFORNIA

13 BENJAMIN FRANKLIN LEGAL
14 FOUNDATION

15 Dated: January 22, 2007

By: s/ James B. Rhoads
James B. Rhoads
Attorney for Plaintiff
RICHARD P. WELLS

17 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding*
18 *signatures, Adam Pines hereby attests that concurrence in the filing of this*
19 *document has been obtained.*

20 **ORDER**

21 IT IS SO ORDERED.

22 Date: January 22, 2007

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